RAPLEYS

NEWSLETTER: APRIL 2018

Rights to Light: it's a funny old game!

Source: https://bit.ly/2HtG3vU

Rapleys Rights to Light specialist, Dan Tapscott, examines whether a recent ruling in favour of Chelsea Football Club scores big or is an own goal for the property and construction industry.

CONTACT

Dan Tapscott
07768 701111
dan.tapscott@rapleys.com

In brief

Chelsea Football Club were granted planning permission by the London Borough of Hammersmith & Fulham for a £1bn redevelopment of their Stamford Bridge stadium. This will increase crowd capacity from 41,000 to 60,000, some 17,000 of which shall be hospitality seating. The increase in total crowd capacity will bring things in line with comparable venues in London, although the level of hospitality seating will be higher than elsewhere.

Chelsea claim that the development will "further enhance the economic, cultural and social services they provide", including £6m worth of educational programmes, a £7m improvement to local infrastructure and an additional £16.3m spent on local businesses as 2.4 million people visit the area annually.

Infringement of Rights to Light

Meanwhile, the owners of a neighbouring property (situated the other side of the railway line, within the neighbouring Royal Borough of Kensington and Chelsea) sought an injunction for an infringement of their Rights to Light. The neighbours had been in residence for over 50 years and the development was deemed as having "an unacceptable and harmful impact" on the windows and rooms directly facing Stamford Bridge. The neighbour was therefore seeking a redesign of the scheme to ensure that the Rights to Light enjoyed by their property were not affected to an unreasonable degree.

Chelsea Football Club were resistant to altering their design and had offered £50,000 worth of legal advice and compensation reported to be in the region of a six-figure sum but could not reach an agreement with the neighbour.

RAPLEYS

NEWSLETTER: APRIL 2018

Rights to Light: it's a funny old game!

CONTACT

Dan Tapscott
07768 701111
dan.tapscott@rapleys.com

David & Goliath?

Broadly speaking, the Courts have been relatively biased towards awarding injunctions where injuries occur in the case of residential properties compared with commercial properties, where it is generally perceived as being more amenable in reaching financial settlements, but there have been exceptions. Therefore, on the face of it, the neighbours appeared to have a very strong case given the degree of infringement, their early objection and the fact they had occupied the property for so long; suffering the injury or moving away did not appear to be a viable option. Certainly the situation had something of a 'David and Goliath' scenario about it.

"Appropriated for planning purposes"

Chelsea Football Club pitched to the Local Authority that they invoked Section 203 of the Housing and Planning Act 2016. This is a simple but powerful piece of legislation whereby, if the local authority have or take an interest in the property, then it can be "appropriated for planning purposes" to assist with enabling the development to proceed for the benefit of the wider community. This effectively means that the neighbour is no longer entitled to an injunction and the levels of compensation are capped. In recent years developers for several large high rise developments in central London have asked the local authority to step in to assist in this manner but we have experience of this approach being adopted across the UK.

In this instance, London Borough of Hammersmith & Fulham appropriated the development site thereby giving the greenlight, subject to planning (and budget) for the development to proceed without the risk of injunctions arising from Rights to Light infringements. Developer 1 – Neighbour nil.

The outcome of this decision has caused some debate due to the emotive nature of the facts surrounding this matter. The neighbour having been in occupation for so long vs the clout of this development with a multitude of resources behind it seems unequitable to many.

Could the development have been designed in such a way to respect the Rights to Light of its neighbours? Was the area truly in need of an additional influx of people to bring further economic benefit and to 'regenerate' one of the most affluent areas of the country?

Need for consultancy advice

In our opinion this was quite a gamble and illustrates the benefit of early engagement with a Neighbourly Matters consultant early on to consider areas of risk and assist the design team to work around them if possible. Envelope studies using 3D models and specialist software are useful tools in the process. If working around the 'at risk' properties is not possible then other options can be reviewed rather than waiting to see what happens post planning. If the Local Authority had chosen not to assist then the re-design and knock on effect to the programme and project budget would have been significant.

The overall conclusion is that each case differs and we are not dealing with a level playing field.

Rapleys Neighbourly Matters team operate nationally and as well as delivering Rights to Light advice, also advise on Daylight & Sunlight Amenity, Party Walls and Access Arrangements such as for crane oversail and scaffolding licences. We act on behalf of developers and neighbours to development.

Existing ground

source: https://bit.ly/2jan7co